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No. 769

In the

Supreme Court of the United States

CITY OF AMARILLO,

Petitioner,

v.

OLIVE COPELAND,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OPINION BELOW

The District Court for the Northern District of Texas, Amarillo Division, entered judgment without written opinion. The opinion of the Court of Appeals, Fifth Circuit, is reported in 218 F. 2d 49.

JURISDICTION

Respondent respectfully submits that the case at Bar involves nothing that would invoke the jurisdiction of this Honorable Court.

The only thing involved is the construction of a written instrument which involves no question that would bring the case within the jurisdiction of this Honorable Court.

QUESTION PRESENTED

The question presented is not in any manner that, as presented by petitioner as will be hereinafter shown.

The only question which could possibly be involved is:

> Was the written instrument executed by plaintiff in the Trial Court an unconditional release?

STATEMENT OF THE CASE

The statement of petitioner is substantially correct.

ARGUMENT

The instrument as copied in part in petitioner's brief clearly shows that the plaintiff (respondent) reserved her cause of action against the City of Amarillo.

The petitioner seems to rely on *Panhandle Gravel Company v. Wilson, 248 S. W. 2d 783*, which is not in point on any phase of the case at Bar. That case was decided on the basis of insurance coverage. That is, the Court held that one insurance policy covered both tort feasors and the release of one of the tort feasors and the insurance company would automatically release the other tort feasor because of coverage under the same policy. *No such set of facts exist in the case at Bar.*

Different instruments very similar to the one involved in the case at bar have been held to be only a "covenant not to sue" and the right of action retained against all other tort feasors. These instruments are fully set out in:

Baylor University v. Bradshaw, 52 S. W. 2d 1094, Sup. Ct. 84 S. W. 2d 703;

City of Coleman v. Kenley, 168 S. W. 2d 926 (Civ. App.).

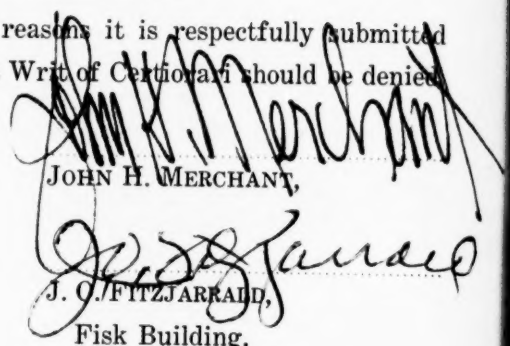
The cases above cited include many authorities holding the same and in fact there is none holding to the contrary and the petitioner makes no effort to cite any such authority.

The trial Court and the Court of Appeals followed *Gattegno v. The Parisian, 53 S. W. 2d 1005,* which was certainly correct under the facts in this case.

The judgment of the trial Court and the Court of Appeals followed the law of the State of Texas, and is clearly correct; there is no conflict of any decision, there is no Federal question, whether important or otherwise, and certainly no reason for this Honorable Court to grant the relief sought by petitioner.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a Writ of Certiorari should be denied.



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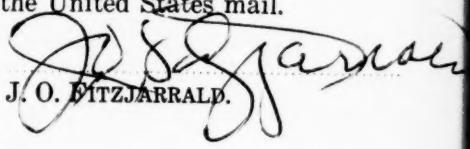
The undersigned hereby certifies that prior to the filing of this brief, a copy has been properly addressed to Mr. Ben Monning, Jr., Attorney for Petitioner, 10th Floor Fisk Building, Amarillo, Texas, with sufficient postage placed thereon and deposited in the United States mail.



J. O. FITZJARRALD.